

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SIERRA LINSMEYER, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JEFFREY STRUCK,

Respondent-Appellant.

UNPUBLISHED
February 10, 2005

No. 257193
Cheboygan Circuit Court
Family Division
LC No. 03-002197-NA

Before: Fort Hood, P.J. and Griffin and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order that terminated his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii) and (g). Because the trial court's decision to terminate parental rights is supported by record evidence to be in the child's best interests, respondent fails to establish clear error. The appointment of counsel was in accordance with established rule and any delay in such appointment of counsel is attributed to respondent. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent does not argue that the statutory grounds for termination were not established by clear and convincing evidence. He contests, instead, the trial court's finding that termination of his parental rights was not clearly against the child's best interests. Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court must order termination of parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision is reviewed for clear error. *Id.* at 356-357.

Respondent is a convicted sex offender. In the state of Washington, he was convicted of third-degree child molestation arising out of a sexual relationship with a fourteen year old girl. On January 27, 2003, respondent was arrested in Michigan for failing to register as a sex offender. Respondent seeks only limited contact with the child, arguing this is in her best interests, and does not argue that the child should be returned to his care. In support of his argument, respondent cites the testimony of a psychologist who advocated for a guardianship or custody arrangement involving minimal contact, supervised visits and child support by respondent. In addition, the foster care worker that supervised visitations between respondent

and the child attested to the bond between the two and that the child was very happy to see respondent. Lastly, in lieu of the child's testimony, all parties stipulated that, had the child testified, she "most likely would have recognized her father, there would have been an exchange of love and we would have observed bonding with the child and she may have been able to tell the court or probably would have been able to tell the court that she loves her dad and would like to be with him."

This evidence was, however, outweighed by the benefits the child received in the stable and loving home provided by her maternal grandfather. Even respondent admitted that the child benefited from remaining in her grandfather's care since she felt comfortable there. Although the first permanency planning hearing was adjourned to explore different options such as a guardianship arrangement that could provide minimal contact with respondent, these options were not acceptable to the child's grandfather who expressed an understandable desire for stability and permanency in the child's life. Therefore, the court could only review the entire record in making its best interests determination. It did not clearly err in deciding that the benefits to the child of remaining in the stable relationship with her grandfather outweighed the benefits she would receive from limited contact with respondent.

Respondent next argues that he should have been appointed an attorney after it was determined at the preliminary hearing that he had parental rights and was awarded visitation. In support of this argument, respondent cites MCR 3.903(A)(7)(d) for the definition of a father as "a man judicially determined to have parental rights." Respondent's argument is contrary to the long-established recognition that a putative father must do more than simply be awarded visitation rights in order to be deemed a father under the court rules governing juvenile proceedings. MCR 3.901 *et seq.* A trial court's grant of visitation rights does not rise to the level of a judicial determination of paternity. Therefore, respondent was a putative father, as defined by MCR 3.903(A)(23), until he established his paternity. The trial court acted properly when it followed the procedures set forth in MCR 3.921(C) that allow a putative father to assert his rights if he chooses. The trial court was not mandated under MCR 3.915(B) to appoint an attorney for respondent at the preliminary hearing since, at that time, respondent had not yet established his paternity.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio